

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.227 OF 2003

Smt. Maria E. de Souza,
46 years, Trained Graduate
Teacher, Progress High School,
Sanquelim, Goa

... PETITIONER

VERSUS

(1) The Director, Directorate
of Education, Government
of Goa, St.Inez
Panaji-Goa;

(2) State of Goa,
through the Secretary
(Education), having
office at Secretariat,
Panaji-Goa;

(3) The Manager,
Progress High School,
Sanquelim, Goa

... RESPONDENTS.

Mr. M.S. Sonak and Ms. Pooja Bharne, Advocates for
the Petitioner.

Mr. G.V. Tamba, Addl. Government Advocate for the
Respondents Nos.1 and 2.

CORAM : F.I. REBELLO &
P.V. HARDAS, JJ.

DATED : JUNE 25, 2003.

ORAL JUDGMENT (PER F.I. REBELLO, J.)

Rule. Respondents waive service. Heard
forthwith.

2. Petitioner was appointed in the
Progress School, Sanquelim, as Assistant Teacher by
Order dated 18th August, 1978. At the time of

appointment, the Petitioner had the following qualifications:- (a) Bachelor of Arts through Bombay University; (b) Inter Arts from Dhempe College of Arts and Science; (c) Matriculation, C.B.S.E. in the year 1973. When the Petitioner was appointed the Petitioner's service conditions were governed by Grant-in-Aid Code. However, from 14-11-1986 they are governed by the provisions of the Goa School Education Act and the Rules made thereunder. Under Rules 63 and 64 of the Code, both Graduate and Undergraduate teachers were required to obtain training qualifications within a period of five years from the date of appointment and the Government was empowered to accept an employee after obtaining training qualifications even beyond the period of five years. The Petitioner obtained training qualifications, i.e. B.Ed. on 10-6-1984.

3. The Respondent No.2 issued a Notification dated 12-8-1987 bearing No.F.5-1180/86-UT.I and another Order dated 3/01/1991 bearing No.DE/GIA/Hg-Sec/19/90-91/Part I/2619 dated 3-1-1991. In terms of Notification dated 12-8-1987 a teacher in the senior scale is entitled for selection scale after completion of 12 years in the senior scale. Considering the

Petitioner's date of appointment, the Petitioner would be completing 12 years on 18-8-2002. It is the case of the Petitioner that accordingly, the Petitioner would be entitled to senior scale with effect from 18-8-1990 and consequently after completion of 12 years on the senior scale the Petitioner is entitled for selection scale with effect from 18-8-2002. It is the case of the Petitioner that the Notification dated 12-8-1987 and Order dated 3-1-1991 came up for consideration of this Court in **Suresh D. Naik v. State of Goa and others** in Writ Petition No.306 of 1994. By Judgment and Order dated 9-7-1998 it is set out that this Court held that in determining qualifying service of twelve years for the purpose of grant of senior scale the starting point ought to be the date of initial regular appointment and not the date on which the teacher may have obtained training qualifications.

It is the case of the Petitioner that the Petitioner has been denied senior scale by the Respondents by refusing to take into account the date of initial appointment. The Respondents on the other hand took into consideration the date of the Petitioner acquiring training qualifications for the purpose of granting senior scale. The

Petitioner's case is that the Petitioner has been granted senior scale with effect from 10-6-1996. It is set out that the said decision is totally in breach of the Judgment dated 9-7-1998. It is the Petitioner's case that the Petitioner through the Association represented in the matter of denial of senior scale by taking into account the date of initial regular appointment which representation is dated 25th August, 2001. It is the case of the Petitioner that in the communication dated 3-4-2001 addressed to the Headmaster of another School it was set out that the senior scale to the staff should be given from the date of training and as the teachers in that School were not petitioners it would have to be examined whether the decision given is applicable to the teachers of that School. The Petitioner's case is that the Petitioners were under bonafide impression that the benefits arising out of the Judgment of this Court would be extended to all similarly placed teachers as the said Judgement was binding on Respondents Nos. 1 and 2. It is, therefore, contended that the Petitioner is entitled to senior scale with effect from 18-8-1990 and not 18-8-1978. Therefore, the Petition on various grounds raised therein.

4. On behalf of the Respondents, Shri

Ashok Dessai who is holding charge of Director of Education since May 2003, has filed his Affidavit. It is contended that no demand for justice has been made and in these circumstances the Petition ought not to be entertained. It is then set out that the Judgment passed in Writ Petition No.306 of 1994 is not applicable as that judgment was pertaining to a Teacher Grade I (Post-Graduate Teacher). It is then set out that the category of Teachers Grade I and the category of teachers Asstt.. Teacher (Trained Graduate) are two distinct categories governed by two different sets of recruitment rules. The initial appointment of the Petitioner was in the year 1978 and she was working in the category of Assistant Teacher (untrained) with pay-scale of Rs.425-640 and not as Trained Graduate Teacher in the pay-scale of Rs.440-740 (pre-revised scale). It is further set out that the Petitioner has approached this Court after five years of the passing of Judgment in Writ Petition No.306 of 1994 and consequently the Petition suffers from laches. It is then set out that by Notification dated 12-8-1987 the Government of India prescribed three-tier scales which included entry scale, senior scale and selection scale. By the Order dated 29-12-1987 the Respondents Nos. 1 and 2 sanctioned implementation of the pay-scales

approved by the Government of India. It is contended that as per the said Notification dated 12-8-1987 every teacher would be required to participate in service training programme of at least three weeks before she crosses the Efficiency Bar or is promoted to senior scale/selection scale i.e. once in every six years provided that where arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time. The senior scale and selection scale has to be given after screening the performance by appropriate D.P.C. It is then set out that in terms of Notification of 12-8-1987 the Petitioner falls in the category 'B'. As the Petitioner acquired training qualifications on 10-6-1984 she was treated as Asstt. Teacher (Trained Graduate) from 1984 and was thus entitled to senior scale after completion of 12 years i.e. from 1996. Insofar as the Petitioner Naik in Writ Petition No.306 of 1994 is concerned, it is set out that his case falls under category 'C' where there is no restriction of having obtained teaching qualifications at the time of regular appointment. It is then pointed out that the Respondent No.1 issued letter to the Headmaster dated 26-11-1996 approving the grant of senior scale to the teachers which included the Petitioner herein. It is also

set out that permission was given after screening regarding their satisfactory performance by the D.P.C. The rest are denials to the averments in the Petition.

5. At the hearing of the Petition, on behalf of the Petitioner it is submitted as under:-

The action of the Respondents Nos. 1 and 2 in not taking into account the Petitioner's service from 18-8-1978 is illegal and arbitrary inasmuch as even under the provisions of the School Education Act, Rules and Circular dated 24-4-1996 and for the purpose of seniority, what was taken into consideration is the date of initial appointment and not the date of confirmation in service. It is then submitted that action of the Respondents Nos. 1 and 2 in denying the Petitioners the benefits of senior scale pursuant to the judgment of this Court dated 9-3-1998 in Writ Petition No.306 of 1994 is illegal, arbitrary and unconstitutional and therefore would be arbitrary and amounts to infringement of Articles 14 and 300A of the Constitution of India.

On behalf of Respondents it is contended

that the senior scale can only be given on the Petitioner having completed 12 years of service on obtaining training qualifications and satisfying the other requirements. The Petitioner was accordingly rightly granted the senior scale in the year 1996. The Petitioner therefore has no right to claim senior scale from an anterior date. It is then submitted that the judgment in the case of Shri Suresh D. Naik (supra) was in respect of Grade I teacher and is therefore clearly distinguishable. Once that be the case and that judgment did not apply to the case of the Petitioner, the Petition ought to be dismissed on that count alone. Lastly, it is contended that the Petition is hit by laches and considering that, no relief as sought for by the Petitioner should be granted to the Petitioner.

6. With the above, we may now examine the contentions as advanced. In the first instance insofar as the Notification dated 12th August 1985 is concerned, under category 'B' three scales are set out:-

(1) Trained Graduate Teachers/Headmasters
Primary School;

(2) Senior Scale (after 12 years);

(3) Selection Scale (after 12 years in senior scale on attainment of qualifications laid down for P.G.Ts.)

Under paragraph 3 the conditions under which the pay-scales are admissible were set out. One of them was that the senior scale be granted after 12 years, to Primary School teachers, trained Graduate teachers, Headmasters of Primary Schools and Post-Graduate teachers/Headmasters of Middle Schools. The selection scale to be granted after 12 years of service of senior scale of the respective cadre.

7. On 3rd January 1999, the Government issued a Notification in respect of Grade I teachers whereby the Grade I teachers appointed from the year 1980-81 onwards were to be considered as trained only from the date they acquired the training qualifications. Grade I teachers appointed prior to 1980-81 with at least 2nd class and Post-Graduate degree when training qualifications were not prescribed and acquiring training qualifications subsequently shall be considered deemed trained on the date of appointment, subject

to the condition that these teachers were appointed prior to 1980-81 and have completed their training qualification before 1985-86 i.e. within the prescribed period of 5 years or extended period of 2 years.

Writ Petition No.306 of 1994 came to be filed by a Grade I teacher who was appointed on regular basis in the year 1982 with effect from 16th March 1982. That teacher obtained training qualifications on 1st May 1983. The Petitioner's case therein was that he is entitled to senior scale with effect from 1st July 1993. This claim was not accepted by the Government and it was specifically set out that the Petitioner would be entitled to senior scale after completion of 12 years of service with effect from the date of acquisition of training qualifications i.e. on 1st May, 1983.

A Division Bench of this Court held that the petitioner was regularly appointed on 16th May 1982 on probation against the post of Teacher Grade I. The Rule itself provided that the incumbent could obtain training qualifications within a period of five years with further extension by another two years and as such, the Petitioner had

obtained the requisite teaching qualifications within the said period. The contention of the Respondents Nos. 1 and 2 in this Petition, who were also Respondents Nos. 1 and 2 in that Petition, was noted that the earlier Order was issued based on Chattopadhyaya Commission scales and the benefits were made applicable to trained teachers. It was however subsequently clarified that the Chattopadhyaya Commission scales had not been implemented though some of the recommendations of the Chattopadhyaya Commission had been accepted. Relying on that it was held that the Respondents could not rely on the letter dated 3rd January, 1991. While dealing with the Notification of 12th August 1987 the Division Bench noted that with reference to Primary School Teachers as well as Trained Graduate Teachers there is specific reference made in relation to selection scale. The selection scale shall be available to the said category of teachers after twelve years in senior scale on attainment of qualifications laid down for Grained Graduate Teachers/Post Graduate Teachers. The Court held that the case of the Petitioner therein fell under the category 'C' and there was no such restriction in categories 'A' and 'B'. The Division Bench relied on the Rules and the Judgment of this Court which had taken the view that

seniority must be counted from the date of regular appointment and not when the teacher obtained training qualifications. In those circumstances, the Court held that the Petitioner therein would be entitled to senior scale on completion of 12 years of service with effect from the date of regular appointment.

8. Dealing with the issue in question in the first instance, if category 'B' is considered insofar as senior scale is concerned that has to be given after 12 years. There is no requirement that qualification of training, as the scale itself is meant for trained Graduate Teachers/Headmasters of Primary Schools. Insofar as the selection scale is concerned, there is a qualification that would be available after 12 years in senior scale on attainment of qualification laid down for Post Graduate Teachers. Therefore, insofar as the senior scale is concerned, no qualification is laid down, as laid down for the selection scale.

Under Rule 78, under category 6 are the posts of Asstt. Teacher/Junior Instructor (i.e. trained Graduate Teachers). The qualifications are a Degree from recognized University and a Degree in Education/Teaching from a recognized University.

Under the proviso to Rule 83 it is provided that no untrained teacher shall be retained in service for more than five years unless he/she joins training College before the completion of five years; of untrained service and in such a situation the Director of Education at his discretion may grant extension by two more years. In other words, a teacher can be regularly appointed not having training qualifications but could get teaching qualifications within a period of five years and/or within the further extended period of two years. In dealing with the inter se seniority in **Domnic Araujo v. State of Goa (1989 Mah. L.J. 538)** this Court held that the seniority must count from the date of the first regular appointment even if the teacher initially had no training qualification and has subsequently obtained the training qualifications.

From the above, it is no doubt true that the Petitioner in Writ Petition No.306 of 1994 was a Grade I Teacher. The Division Bench inspite of Notification dated 3rd January, 1991 did not rely on the said Notification which set out that Grade I Teachers appointed with effect from the year 1980-81 should be considered as eligible only from the date they acquired their training

qualifications. Insofar as the Teachers appointed prior to 1980-81 are concerned, it had been laid down that if they completed their training qualifications by the year 1985-86, their service could be considered as deemed trained to grant senior scale as recommended by Chattopadhyaya Commission.

In the instant case as noted earlier, the Petitioner was appointed on 18-8-1978. Petitioner got the B.A. qualification in 1976 and training qualifications on 10-6-1984, therefore, within the period contemplated under the Rules. Once the teaching qualifications were obtained, the Petitioner's seniority would have to be considered as from 18-8-1978 and not from the date on which the Petitioner obtained her training qualifications. The Circular of 12th August 1985 relied upon as already set out would result in senior scale being granted to a trained Graduate Teacher after 12 years. The scale for trained Graduate Teacher was Rs.1400-2600. There was no other scale for Graduate Teachers when the Notification was issued on 12th August, 1985. The senior scale would thereafter be applicable on 12 years regular service, irrespective when the teacher obtained training qualification.

The objection on behalf of the Respondents is that when the Petitioner was appointed, she was on untrained teacher's scale of Rs.425-640 and not as Trained Graduate Teacher which post had the scale of Rs.440-750. This could have been considered if the position had remained the same. As the Notification of 1985 shows, there was only one scale granted to Graduate Teachers, whether trained or untrained. A Graduate Teacher though untrained would be entitled to the same pay-scale as a Trained Graduate Teacher. If the distinction which is sought to be made out on behalf of Respondents Nos. 1 and 2 is accepted, what in fact would mean is that whereas the teachers appointed after the Notification of 1985, if the view canvassed is to be taken, would be entitled to pay-scale even if untrained, those appointed before 1985 because there were two pay-scales one for untrained graduate and the other for trained graduates would not be entitled for the benefit. This, in our opinion, would not be a valid classification considering that in the year 1985 there was only one pay-scale. The Rule will have to be construed based on the scales existing and not on pre-existing scales. The requirements of being trained for the purpose of counting years of service to give effect to the pay-scales at least

is not discernible. The Notification of the Government of India dated 12th August 1985 was given effect to by the Respondent No.2 by Order of 29-12-1987. Even in the Annexure annexed to the Affidavit of the Respondents under category 'B' insofar as the senior scale is concerned, there is no reference whatsoever to attainment of teaching qualifications for the purpose of counting service. Even otherwise, we are unable to understand the distinction as for the purpose of counting the teacher's service, it is to be counted as regular from the date of their first appointment, irrespective of having teaching qualifications. If that be the case in the matter of granting pay-scale how that would become relevant as all teachers are now entitled to only one scale at the time of their appointment.

9. We are, therefore, clear that a period to be counted will have to be the same date which is considered for the purpose of seniority. The Petitioner herein would be considered to be on regular service from 18th August, 1978. Once that be the case, the next issue is whether the Petitioner would be entitled to the senior scale on completion of 12 years in terms of the Notification dated 12-8-1987. The Petitioner, therefore, would

be eligible as on 17th August, 1990. The Petitioner has to be considered to be trained. The Respondents have treated 12 years for granting the senior scale to the Petitioner from the day the Petitioner acquired training qualifications. We have held that that would be immaterial. The Petitioner has been held eligible for the senior scale from 10th June, 1984, the day when the Petitioner acquired training qualifications and consequently has been granted the senior scale from 10th June, 1996 having been recommended by the D.P.C. There is nothing before us to show that there is anything adverse against the Petitioner and in that view of the matter, the Petitioner would be eligible for grant of senior scale from 18th August, 1990. The Petitioner has, however, moved this Court by filing this Petition on 16th April, 2003. It is contended by the Petitioner that she did not move earlier as a representation was made by the All Goa Secondary Schools Association by the letter of 25th August, 2001. The representation only shows that there was a demand by the Association. Reliance was placed on a Judgment of this Court in Writ Petition No.306 of 1994 for that demand. In view of the fact, the Petitioner has herself not represented. It will not be possible for this Court to grant to the

Petitioner the arrears prior to 10th June, 1996. The Petitioner, however, would be entitled to be placed in the senior scale on 18th August, 1990. The arrears to be calculated on that basis.

10. In the prayer clause, the Petitioner has also prayed that she be granted selection scale w.e.f. 19th August, 2003. Considering that the Petitioner would be eligible for the senior scale from 18th August, 1990. The period of 12 years would be over on 18th August, 2002. At the highest, therefore, Petitioner would be entitled to have her case considered for selection scale w.e.f. 18th August, 2002. In the light of that, the following Order:-

Rule made absolute in terms of prayer clause (A) but with a further direction that she will be paid arrears only from 10th June, 1996. The Petitioner will be further entitled to a direction that the Respondents consider the Petitioner for selection scale w.e.f. 18th August, 2002 and if eligible to place her in the selection scale on that date with all consequential benefits of the selection scale.

Petition disposed of accordingly. In the

circumstances of the case there shall be no order
as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

ac/RD.